

**Rule 364. Hearing Process****Rule 364.01 Right to Hearing**

Any party has a right to a hearing unless otherwise stated in these rules.

**Rule 364.02 Scheduling of Hearing**

The initiating party shall schedule a hearing if a written answer or a request for hearing form is received. The initiating party shall contact the court administrator or the court administrator's designee to obtain a hearing date and shall serve upon all parties and the county agency by U.S. mail at least 14 days before the scheduled hearing, notice of the date, time, and location of the hearing. If the initiating party has agreed to or is required to accept electronic service under Rule 14, then the notice shall be served electronically upon all other parties who have agreed to or are required to accept electronic service under Rule 14.

(Amended effective July 1, 2015.)

**Rule 364.03 Timing of Hearing**

In the event the parties are unable to resolve the matter, a hearing shall be held no sooner than twenty (20) days after service of the summons and complaint or notice of motion and motion, unless the time period is waived by the parties. Every effort shall be made to conduct the hearing no later than sixty (60) days after service of the summons and complaint or notice of motion and motion on the last person served or, in an establishment of parentage case, no later than sixty (60) days after receipt of the genetic test results. If conducted later than sixty (60) days, the court administrator shall report that fact to the chief judge of the judicial district. Conducting a hearing later than sixty (60) days after service or receipt of blood or genetic test results does not deprive the child support magistrate of jurisdiction.

***Advisory Committee Comment***

*Federal law requires 75% of cases commenced in the Expedited Process to be completed within six (6) months from the date of service of process and 90% of the cases to be completed within twelve (12) months from the date of service of process. 45 C.F.R. section 303.101 (2000). If the hearing is initially scheduled within sixty (60) days under Rule 364.03 and is later continued to beyond sixty (60) days, that fact must be reported to the chief judge of the judicial district.*

**Rule 364.04 Notice of Hearing**

A notice of the hearing shall:

- (a) state the name of the court;
- (b) state the names of the parties;
- (c) state the date, time, and location of the hearing;
- (d) state that the parties shall appear at the hearing, unless otherwise provided in these rules;
- (e) inform the parties of the requirement to bring to the hearing sufficient copies of all documents the parties intend to offer; and
- (f) if possible, include the name of the child support magistrate assigned to the case.

**Rule 364.05 Continuance of Hearing**

Upon agreement of the parties or a showing of good cause, the child support magistrate may grant a request for continuance of a hearing. An order granting a continuance may be stated orally



on the record or may be in writing. Unless time does not permit, a request for continuance shall be made in writing, and shall be filed with the court and served upon all parties at least five (5) days before the hearing. In determining whether good cause exists, due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

***Advisory Committee Comment***

*Rule 364.05 provides that a continuance may be granted for good cause. Examples of good cause include: death or incapacitating illness of a party or attorney of a party; lack of proper notice of the hearing; a substitution of the attorney of a party; a change in the parties or pleadings requiring postponement; an agreement for a continuance by all parties provided that it is shown that more time is clearly necessary. Good cause does not include: intentional delay; unavailability of counsel due to engagement in another judicial or administrative proceeding unless all other members of the attorney's firm familiar with the case are similarly engaged, or if the notice of the other proceeding was received prior to the notice of the hearing for which the continuance is sought; unavailability of a witness if the witness' testimony can be taken by deposition; and failure of the attorney to properly utilize the statutory notice period to prepare for the hearing.*

**Rule 364.06 Explanation of Hearing Purpose and Procedure**

At the beginning of each hearing the child support magistrate shall explain the purpose of the hearing and the process and procedures to be used during the hearing.

**Rule 364.07 Hearings Open to Public**

All hearings are open to the public, except as otherwise provided in these rules or by statute. For good cause shown, a child support magistrate may exclude members of the public from attending a hearing.

***Advisory Committee Comment***

*Under Minnesota Statutes 2000, section 257.70, hearings regarding the establishment of parentage are closed to the public. Other proceedings identified in Rule 353.01 are generally open to the public.*

**Rule 364.08 Record of Hearing**

Each child support magistrate shall ensure that an accurate record is made of each hearing over which the magistrate presides.

***Advisory Committee Comment***

*Under Minnesota Statutes 2000, section 484.72, subdivisions 1 and 6, records of hearings and other proceedings in the expedited process may be made either by competent stenographers or by use of electronic recording equipment. (Minnesota Laws 1996, chapter 196, article 1, section 3.) If electronic recording equipment is used, it must meet the minimum standards promulgated by the state court administrator and must be operated and monitored by a person who meets the minimum qualifications promulgated by the state court administrator. The minimum standards are set forth in Minnesota State Court System Administrative Policy, dated June 29, 1999.*

**Rule 364.09 Right to Present Evidence**

**Subdivision 1. Generally.** Each party may present evidence, rebuttal testimony, and argument with respect to the issues.

**Subd. 2. Testimony and Documents Permitted.** Evidence may be presented through documents and testimony of the parties or other witnesses. Testimony may be given in narrative fashion by



witnesses or by question and answer. Any party may be a witness and may present witnesses. All oral testimony shall be under oath or affirmation. The child support magistrate may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses. In any proceeding, a sworn written affidavit of any party or witness may be offered in lieu of oral testimony.

**Subd. 3. Necessary Preparation Required.** The parties shall exchange copies of documents five (5) days before the hearing. If the exchange is not completed within the required time frame each party shall bring to the hearing all evidence, both oral and written, the party intends to present. Each party must have enough copies of each exhibit the party intends to offer so that a copy can be provided to all other parties and the child support magistrate at the time of the hearing. The child support magistrate shall have discretion in determining whether evidence that was not timely exchanged prior to the hearing should or should not be admitted.

(Amended effective July 1, 2001; amended effective November 1, 2003.)

### **Rule 364.10 Evidence**

**Subdivision 1. Type of Evidence Admissible.** The child support magistrate may admit any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. The child support magistrate shall give effect to the rules of privilege recognized by law. Evidence that is not related to the issue of support, is unimportant to the issue before the magistrate, or that repeats evidence that has already been provided shall not be allowed.

**Subd. 2. Evidence Part of Record.** All pleadings and supporting documentation previously served upon the parties and filed with the court, unless objected to, may be considered by the magistrate. Only evidence that is offered and received during the hearing or submitted following the hearing with the permission of the child support magistrate may be considered in rendering a decision, including, but not limited to, testimony, affidavits, exhibits, and financial information.

**Subd. 3. Documents.** Ordinarily, copies or excerpts of documents instead of originals may be received or incorporated by reference. The child support magistrate may require the original or the complete document if the copy is not legible, there is a genuine question of accuracy or authenticity, or if it would be unfair to admit the copy instead of the original. Any financial documents prepared by the employee of the county agency are admissible without requiring foundation testimony or appearance of the employee of the county agency.

**Subd. 4. Notice of Facts.** The child support magistrate may take judicial notice of facts not subject to reasonable dispute, but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

### **Rule 364.11 Burden of Proof**

The party proposing that certain action be taken shall prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard. A party asserting an affirmative defense has the burden of proving the existence of the defense by a preponderance of the evidence.

### **Rule 364.12 Examination of Adverse Party**

A party may call an adverse party or any witness for an adverse party, and may ask leading questions, cross-examine, and impeach that adverse party or witness.



**Rule 364.13 Role of Child Support Magistrate**

A child support magistrate may ask questions of witnesses when needed to ensure sufficient evidence to make the required findings.

**Rule 364.14 Discretion to Leave Record Open**

At the conclusion of a hearing, the child support magistrate may leave the record open and request or permit submission of additional documentation. Unless otherwise ordered by the child support magistrate, such additional documentation shall be submitted to the court within ten (10) days of the conclusion of the hearing. Documents submitted after the due date or without permission of the child support magistrate shall be returned to the sender and shall not be considered by the child support magistrate when deciding the case.

**Rule 364.15 Close of Record**

The record shall be considered closed either at the conclusion of the hearing or upon the expiration date for submission by the parties of any additional documentation authorized or requested by the child support magistrate, whichever is later. At the close of the record, the child support magistrate shall issue a decision and order pursuant to Rule 365.